

No. 1-11-1920

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 11905
)	
MELVIN WILSON,)	Honorable
)	Thomas V. Gainer Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Pierce dissented in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction of aggravated discharge of a firearm affirmed over claim that the truth-in-sentencing statute is ambiguous, and that the rule of lenity should apply.
- ¶ 2 Following a jury trial, defendant, Melvin Wilson, was found guilty of aggravated discharge of a firearm, then sentenced to eight and one-half years' imprisonment to be served at 85%. On appeal, defendant contends that two statutory provisions governing the award of sentence credit for the offense of aggravated discharge of a firearm are in conflict, and, accordingly, the conflict should be resolved in his favor to allow him day-for-day credit. He also

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contends that his mittimus must be corrected to accurately reflect the offense for which he was convicted.

¶ 3 Defendant was charged by indictment with attempted first degree murder, home invasion, aggravated discharge of a firearm, criminal trespass to a residence, two counts of unlawful use of a weapon by a felon, and four counts of violating an order of protection, in connection with an incident wherein he fired two gunshots in the direction of his former girlfriend, Joyce Turner. Prior to trial, the State elected to proceed on the attempted first degree murder, home invasion, and aggravated discharge of a firearm charges.

¶ 4 The evidence adduced at trial showed that on June 8, 2008, Turner, who had previously been romantically involved with defendant, was at her sister's apartment in Chicago. Turner testified that defendant arrived, and "buzzed" for entry into the building, identifying himself as one of her sister's friends. Turner allowed him inside, and he walked into the apartment and began to search it. Turner asked him to leave, but he refused. Turner then walked into the hallway, followed by defendant, and they began to argue. Defendant pulled out a gun from under his shirt, pointed it at her head and fired a shot. The bullet missed her head and hit the wall. She then ran up the stairs to a friend's apartment, and heard another shot fired, but was not struck by it.

¶ 5 Defendant testified that in April 2008, he had been robbed outside of the building where Turner's sister lived, and on June 8, 2008, he came to her apartment to see if she had any new information about the robbery. He did not know that Turner was at the apartment, and used his own "nickname" when he asked to be let inside. Turner came out of the apartment, met him in the hallway, and they argued for several minutes before Turner started to walk away. Defendant then took out his gun, and shot it into the ceiling "just to get [her] attention." Turner came back and yelled at him, after which he fired the gun again, "[o]ver [her] head, away from her, towards the ceiling." He then left the building and went home, where he was subsequently apprehended.

¶ 6 At the close of evidence and argument, the jury found defendant guilty of aggravated discharge of a firearm, and not guilty of attempted first degree murder and home invasion. After announcing its sentencing determination, the trial court noted that "[t]he law says that defendant must serve 85 percent of the sentence[.]"

¶ 7 In this appeal from that judgment, defendant does not contest the sufficiency of the evidence to sustain his conviction, but questions the applicability of the truth-in-sentencing provisions to his case. He maintains that the two statutory provisions governing sentencing credit for the offense of aggravated discharge of a firearm are in conflict, in that one would allow him to receive day-for-day credit and the other would not. 730 ILCS 5/3-6-3(a)(2)(iii), (iv) (West 2008). As a result, he contends that the rule of lenity applies, and that he should be allowed day-for-day sentencing credit.

¶ 8 The State initially responds that defendant has forfeited this issue by not preserving it below, and further, that there was no error to warrant plain error review. Defendant replies that he did not forfeit the issue because the requirement that he serve 85% of his sentence is "void." The supreme court has determined that a sentence, or portion thereof, which does not conform to a statutory requirement is void, and may be attacked at any time or in any court, either directly or collaterally. *People v. Thompson*, 209 Ill. 2d 19, 24-25 (2004). Accordingly, defendant may present his challenge in this appeal. *Thompson*, 209 Ill. 2d at 27.

¶ 9 Turning to the merits, defendant raises a claim of statutory interpretation, which we review *de novo*. *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature (*Marshall*, 242 Ill. 2d at 292), and, thus, a court must consider the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it (*People v. McCarty*, 223 Ill. 2d 109, 124 (2006)). The most reliable indicator of such intent is the language of the statute, given its plain and ordinary meaning. *Marshall*, 242 Ill. 2d at 292. Where that language

is clear and unambiguous, we apply the statute without further aids of statutory construction. *Marshall*, 242 Ill. 2d at 292. However, where the language is ambiguous, we may apply other extrinsic aids for construction to resolve the ambiguity and determine legislative intent. *People v. Salley*, 373 Ill. App. 3d 106, 110 (2007). Although ambiguous penal statutes are generally construed strictly in favor of defendants, this rule does not require a reviewing court to interpret a statute in a manner that yields an absurd result, particularly where that result runs directly contrary to the purpose of the statute. *People v. Haissig*, 2012 IL App (2d) 110726, ¶ 20 (citing *People v. Kelly*, 344 Ill. App. 3d 1058, 1063 (2003)).

¶ 10 Defendant challenges section 3-6-3 of the Unified Code of Corrections (Code), known as the "truth in sentencing" statute. 730 ILCS 5/3-6-3 (West 2008). *Salley*, 373 Ill. App. 3d at 109. Generally, prisoners are entitled to day-for-day credit against their sentences (730 ILCS 5/3-6-3(a)(2.1) (West 2008)); however, under the truth-in-sentencing provisions, defendants convicted of certain enumerated offenses are excepted from the day-for-day credit provision and are ineligible to receive some or all of that credit. 730 ILCS 5/3-6-3(a)(2) (West 2008); *Salley*, 373 Ill. App. 3d at 109. As pertinent to this appeal, a defendant whose offense is subject to subsection (iii) or (iv), may receive no more than 4.5 days of credit for each month of his or her sentence, thus requiring him to serve 85% of his sentence. 730 ILCS 5/3-6-3(a)(2)(iii), (iv); *Salley*, 373 Ill. App. 3d at 109.

¶ 11 The contested statute specifically provides, in pertinent part:

"(2) The rules and regulations on sentence credit shall provide, with respect to offenses listed in clause *** (iii) of this paragraph (2) committed on or after June 19, 1998, or with respect to the offense listed in paragraph (iv) of this paragraph (2) committed on or after June 23, 2005 (the effective date of Public Act 94-71) *** the following:

* * *

(iii) that a prisoner serving a sentence for *** aggravated discharge of a firearm *** when the court has made and entered a finding, pursuant to subsection (c-1) of Section 5-4-1 of this Code, that the conduct leading to conviction *** resulted in great bodily harm to a victim, shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment;

(iv) that a prisoner serving a sentence for aggravated discharge of a firearm, whether or not the conduct leading to conviction for the offense resulted in great bodily harm to the victim, shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment[.]" 730 ILCS 5/3-6-3(a)(2) (West 2008).

¶ 12 Defendant contends that, due to the conflict inherent in subsection (iii), where the court may require a defendant to serve 85% of his sentence only if it enters a finding that the conduct leading to the aggravated discharge of a firearm conviction resulted in great bodily harm, and subsection (iv), which mandates the 85% rule for the same offense without such a finding, the requirement that he serve 85% of his sentence is void. 730 ILCS 5/3-6-3(a)(2)(iii), (iv) (West 2008). We disagree.

¶ 13 Construing the statute as a whole and affording the language its plain and ordinary meaning, we find no conflict. *Marshall*, 242 Ill. 2d at 292; *McCarty*, 223 Ill. 2d at 124. Each provision cited sets forth certain circumstances under which a defendant convicted of aggravated discharge of a firearm will be ineligible for day-for-day sentence credit. Specifically, subsection (iii), which defendant claims entitles him to day-for-day sentence credit, provides that when the court makes a finding of great bodily harm associated with defendant's commission of

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aggravated discharge of a firearm, he shall be required to serve at least 85% of his sentence. 730 ILCS 5/3-6-3(a)(2)(iii). The opposite conclusion—that a court may *not* require a defendant to serve 85% of his sentence if it does *not* find great bodily harm—is not a necessary corollary, particularly given subsection (iv), which requires defendant to serve 85% of his sentence for his aggravated discharge of a firearm conviction regardless of such a finding.

¶ 14 In addition, the plain language of the statute shows that the two subsections apply to aggravated discharge of a firearm offenses committed during different time periods. Subsection (iii), which requires a finding of great bodily harm, applies to those offenses committed on or after June 19, 1998, whereas subsection (iv) applies to offenses committed on or after June 23, 2005, the effective date of Public Act 94-71, which amended the statute to add section (iv), eliminating the "great bodily harm" requirement for aggravated discharge of a firearm offenses committed on or after the effective date. 730 ILCS 5/3-6-3(a)(2) (West 2008); Pub. Act 94-71 (eff. June 23, 2005). This provision clearly shows that the amendment was intended to render defendants whose offenses were committed on or after the effective date ineligible for day-for-day sentencing credit, but those defendants whose offenses were committed prior to the amendment would continue to be subject to the provisions of subsection (iii). To hold otherwise would be contrary to the plain language of the statute, and lead to absurd results. *People v. Hanna*, 207 Ill. 2d 486, 498 (2003) ("statutory language should not be construed to produce an absurd result").

¶ 15 This interpretation is also supported by the legislative history of Public Act 94-71 (Pub. Act 94-71 (eff. June 23, 2005)). When the amendment adding subsection (iv) was being considered on the Senate floor, Senator DeLeo explained that the bill " provides that a -- person convicted of aggravated discharge of a firearm shall receive *** no more that 4.5 days of good conduct credit for each month of sentence. *** Currently, a *** person convicted of aggravated discharge of a firearm is eligible for day for day. This shortens it." 94th Ill. Gen. Assem.,

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Senate Proceedings, May 17, 2005, at 17. Similarly, in the House, Representative Schmitz explained the bill as "making a *** well needed correction in the Truth in Sentencing Law. Right now, as it stands, *** if you use a firearm and you shoot an individual and you actually hit them, you serve out 85 percent of your term. If the victim is fortunate enough not to be shot at or be hit, they only have to serve half their term or a portion of it. So, what this is trying to do is add aggravated discharge of a firearm into the Truth in Sentencing Law." 94th Ill. Gen. Assem., House Proceedings, Feb. 9, 2005, at 8. These statements further clarify that the intent of the legislature in amending the statute by adding subsection (iv) was to render defendants convicted of aggravated discharge of a firearm after June 23, 2005, ineligible for day-for-day sentence credit, regardless of any finding of bodily harm. We thus find no ambiguity in the statute, and conclude that the 85% rule was properly applied in defendant's case.

¶ 16 Defendant next contends that his mittimus should be amended "to accurately reflect the offense for which [he] was convicted." Defendant's order of commitment and sentence provides that defendant was found guilty of "720 ILCS 5/24-1.2(a)(2)[,] AGG DISCHARGE FIREARM/OCC VEH[.]" He alleges that he was charged and convicted of aggravated discharge of a firearm "in the direction of another person[.]" not an occupied vehicle, and therefore the "OCC VEH" portion of his mittimus should be amended. The State disagrees, responding that the mittimus correctly identifies "720 ILCS 5/24-1.2(a)(2)[,]" the crime for which he was convicted.

¶ 17 The question of whether defendant's mittimus should be amended is a purely legal issue, and we apply a *de novo* standard of review. *People v. Harris*, 2012 IL App (1st) 092251, ¶ 34. As defendant notes, this court may correct the mittimus to accurately reflect the name of the offense for which a defendant has been convicted, even where the statutory citation is correct. *People v. Blakney*, 375 Ill. App. 3d 554, 560 (2007); *People v. Spivey*, 351 Ill. App. 3d 763, 772 (2004). Here, defendant was convicted of aggravated discharge of a firearm in the direction of

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another person; he was not convicted of aggravated discharge of a firearm in the direction of an occupied vehicle. Pursuant to Supreme Court Rule 615(b)(1), we direct the clerk of the circuit court to amend the mittimus by omitting the reference to "OCC VEH" in order to accurately reflect the offense of which defendant was convicted. *Blakney*, 375 Ill. App. 3d at 560.

¶ 18 Accordingly, we order that the mittimus be corrected, and we affirm the judgment of the circuit court in all other respects.

¶ 19 Affirmed; mittimus corrected.

¶ 20 JUSTICE PIERCE, dissenting.

¶ 21 I agree with the majority that the defendant has not forfeited his claim that the two statutory provisions governing the sentencing credit for the offense of aggravated discharge of a firearm are in conflict. However, I respectfully disagree that the rule of lenity does not apply in this case. Because there is an obvious conflict between the two provisions, the rule of lenity applies and the defendant should be given day-for day sentencing credit.

¶ 22 The majority correctly states the well known and frequently applied rules applicable to statutory interpretation, the objectives and approach to be taken where the statutory language is clear and unambiguous and where the language is ambiguous. *Supra* ¶ 9. A plain reading of the applicable statutes shows both provisions are clear, unambiguous and do not require resort to extrinsic aids. As such, the resort to the legislative history of Public Act 94-71 (Pub. Act 94-71 (eff. June 23, 2005) is an unnecessary distraction from dealing with the clear statutory conflict at issue.

¶ 23 Defendant was convicted of aggravated discharge of a firearm and therefore subject to sentencing pursuant to 730 ILCS 5/3-6-3 (a) (2) (West 2008) which, in pertinent part, provides

"(2) The rules and regulations on sentence credit shall provide, with respect to offenses listed in *** (iii) of this paragraph (2) committed on or after June 19, 1998, or with respect to the offense listed in paragraph (iv) of this paragraph (2)

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committed on or after June 23, 2005 (the effective date of Public Act 94-71) ***
the following

(iii) that a prisoner serving a sentence for *** aggravated discharge of a firearm
*** when the court has made and entered a finding, pursuant to subsection (c-1)
of Section 5-4-1 of the Code, that the conduct leading to conviction *** resulted
in great bodily harm to a victim, shall receive no more than 4.5 days of sentence
credit for each month of his or her sentence of imprisonment;

(iv) that a prisoner serving a sentence for aggravated discharge of a firearm,
whether or not the conduct leading to a conviction for the offense resulted in great
bodily harm to the victim, shall receive no more than 4.6 days of sentence credit
for each month of his or her sentence of imprisonment[.] " 730 ILCS 5/3-6-3 (a)
(2) (West 2008).

¶ 24 A reading of these provisions demonstrates a clear statutory conflict creating an issue of
which subsection applies to determine whether this defendant should get day-for-day credit on
his sentence. Subsection (a)(2)(iii) clearly provides that, for any aggravated discharge of a
firearm offense committed after June 19, 1998, the defendant will serve 85% of his sentence
where a court finds the conduct leading to the conviction resulted in great bodily harm.
Subsection (a)(2)(iv) clearly provides that a defendant convicted of aggravated discharge of a
firearm for an offense committed after June 23, 2005 will serve 85% of his sentence without
regard to whether the conduct leading to the conviction resulted in great bodily harm. Clearly
these provisions are in conflict.

¶ 25 In the present case, the conduct resulting in the conviction took place after June 19, 1998
and after June 23, 2005. Defendant falls within the statutory framework of both subsection

(a)(2)(iii) and subsection (a)(2)(iv). The legislature did not repeal or amend subsection (a)(2)(iii) when it enacted subsection (a)(2)(iv). The legislature could have employed customary legislative procedure by striking aggravated discharge of a firearm from subsection (a)(2)(iii) when it enacted subsection (a)(2)(iv) to remove this obvious conflict but it did not do so. Thus, subsection (a)(2)(iii) remains "on the books" and under the rule of lenity, the defendant was entitled, in my judgment, to receive day-for-day good conduct credit toward his sentence under subsection (a)(2)(iii). *People v. Hillenbrand*, 121 Ill. 2d 537, 560 (1988) (an ambiguity in a penal statute as to which of two possible penalties is to be imposed is to be resolved in favor of lenity). *People v. Davis*, 199 Ill. 2d 130, 140-141 (2002). *People v. Maldonado*, 402 Ill. App. 3d 1068, 1075 (2010).

¶ 26 The State contends there is no conflict between these two statutory provisions. It argues that the legislature chose to single out certain offenses (including aggravated discharge of a firearm) and limit the amount of good time credit for offenders who commit such an offense where great bodily harm results. The State argues the legislature has the power under 730 ILCS 5/5-4-1(c-1) (West 2008) to require the trial court to make a finding on an aggravated discharge of a firearm conviction as to whether the defendant's conduct caused great bodily harm so as to limit the amount of good time credit under subsection (a)(2)(iii), and, it concurrently has the power under subsection (a)(2)(iv) to never allow for day-to-day credit on an aggravated discharge of a firearm conviction regardless of whether the defendant's conduct caused great bodily harm. The State claims "[I]t is perfectly within the power of the Illinois Legislature to single out aggravated discharge of a firearm as an offense that both requires a finding in the sentencing hearing as to whether great bodily harm was caused, and, is ineligible for day-for-day credit regardless of the results of that finding."

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¶ 27 This argument makes little sense. The purpose of the hearing under subsection (a)(2)(iii) is to give the defendant day-for-day credit if there was no bodily harm caused and to limit the amount of good time credit if bodily harm was caused. I see no purpose in holding a required hearing for an aggravated discharge of a firearm conviction pursuant to subsection (a)(2)(iii) if, as the State argues, the defendant is "ineligible for day-for-day credit regardless of the results of that finding" under subsection (a)(2)(iv). This would be an absurd result.

¶ 28 The obvious resolution of this statutory conflict is to apply the rule of lenity and allow the defendant the good time credit provided under subsection (a)(2)(iii). Based upon the record before us, there being no evidence of great bodily harm resulting from the occurrence giving rise to defendant's conviction, I would order the clerk of the circuit court to correct the mittimus to reflect a day-for-day good conduct credit sentence. Accordingly, I respectfully dissent.

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